have gone much further.[21] England[22] and Quebec[23] have recently held that, at common law, women cannot be attorneys, but these cases involve only the custom in a particular profession. In both England and America, should the question of common-law eligibility arise again before the matter is finally settled by statute, the dicta and discussion in *Frost* v. *The King*[24] may lead the court to decide in favor of eligibility.

LEGAL STATUS OF VOLUNTARY ASSOCIATIONS.[1] — In the absence of a statute, it is clear that a voluntary or unincorporated association cannot sue or be sued in the name of the association.[2] But statutes in many jurisdictions allow actions by, or against, such organizations in their ordinary name, or in the name of some officer.[3] The famous case of the *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants*[4] held that an Act of Parliament[5] which gave unincorporated trade unions a right to hold property for their own use and provided for a registry of their names, by implication made the unions liable to suits against them in such registered name. For the purposes of that case, it is submitted, it would have made no great difference whether the association were regarded as a legal entity distinct from its members, or whether the trade union's name were considered merely as an authorized compendious designation, by way of procedure, for all or for certain representative members of the union. The House of Lords did adopt the view that the union was a legal entity, and this seems a proper and desirable result. But since the suit was for an injunction only, the suggestion of Lord Macnaghten[6] and of Lord Lindley,[7] that a representative action,

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[21] State *v.* Quible, 86 Neb. 417, 125 N. W. 619 (1910) (county treasurer); Opinion of the Justices, *supra* (county treasurer).

[22] Bebb *v.* Law Society, L. R. [1914] 1 Ch. D. 286.

[23] Langstaff *v.* Bar of Province of Quebec, 25 Que. K. B. 11 (1915). The American authorities are divided.

[24] *Supra.*

[1] For a discussion of the general problem of the jurisdiction of courts over a controversy between a voluntary association and a member, see Universal Lodge No. 14, F. & A. M. *v.* Valentine, 107 Atl. 531 (Md. 1919).

[2] Francis *v.* Perry, 82 Misc. 271, 144 N. Y. Supp. 167 (1913). See Allis-Chalmers Co. *v.* Iron Moulders' Union, 150 Fed. 155, 183 (1906); New England States Sangerbund *v.* Fidelia Musical & Educational Society, 218 Mass. 174, 105 N. E. 629 (1914).

[3] Francis *v.* Perry, *supra;* Court Harmony, A. O. F. *v.* Court Abraham Lincoln, A. O. F., 70 Conn. 634, 40 Atl. 606 (1898). Colorado, Michigan, Minnesota, New Jersey, Pennsylvania, and a number of other states have similar statutes. In some cases they are limited to fraternal benefit societies paying more than a minimum death benefit, as in West Virginia. See CODE 1913, c. 55 A, §§ 3226–3263. In Minnesota, the statute has been held to apply only to business partnerships and only to parties defendant. St. Paul Typothetæ *v.* St. Paul Bookbinders' Union, 94 Minn. 351, 102 N. W. 725 (1905). Other modifications are found in the interpretations of the Ohio and the Nebraska statutes.

[4] [1901] A. C. 426. See 15 HARV. L. REV. 311.

[5] TRADE UNION ACT 1871, 34 & 35 VICT. c. 31, as amended by ACT OF 1876, 39 & 40 VICT. c. 22.

[6] See page 438 of report. See also Pickett *v.* Walsh, 192 Mass. 572, 589, 78 N. E. 753, 760 (1906); American Steel & Wire Co. *v.* Wire Drawers' & Die Cutters' Unions, 90 Fed. 598, 605 (1898). See POMEROY, CODE REMEDIES, 4 ed., 267.

[7] See page 443 of report.

even in the absence of statute, would have bound all members of the society, seems tenable.

In many cases, however, the decision of the question, whether statutes allowing suits against voluntary associations in the association name affect the adjective or the substantive law, is of importance practically as well as theoretically. Thus, since the common law dealt with associations solely in accordance with the principles governing partnerships, such an organization could not sue a member or be sued by a member at law,[8] and the only remedy lay in equity.[9] Hence a court which regarded the change as procedural merely, might be expected to hold that this right was not enlarged, and the Connecticut court has taken this view.[10] The New York court, on the other hand, has held that such an action at law was permitted[11] under the New York Code.[12] Again, in the case of *Saunders* v. *Adams Express Co.*,[13] the New Jersey court decided that the question of the party to be sued was one of procedure, to be regulated by the *lex fori*, and that the action need not be brought against the president or treasurer of this New York joint-stock association, as the New York statute provided, but that it might be brought against the association in its usual name, in accordance with the provisions of the New Jersey Code.[14] A Michigan case,[15] however, finds a statute of this type sufficient reason for treating a voluntary association as a legal entity, distinct from its members.

In the satisfaction of a personal judgment rendered against a voluntary association, the question of the status of the association is again raised. At common law, such a judgment was, of course, void and could not be enforced.[16] But under the statutes it has been held that such a judgment could be enforced against the property of the association.[17] And many cases have limited the right of the plaintiff to levy execution, under such a judgment, to this association property.[18] But this does not mean that the liability of a member is a limited liability. If an action against the association fails to secure the satisfaction of the debt, then an action will still lie against the individual associate.[19] Nor is limited liability the *sine qua non* of corporate*ness*. It is submitted that if the legislature should pass a law providing for the unlimited liability of

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[8] McMahon *v.* Rauhr, 47 N. Y. 67 (1871); Cheeny *v.* Clark, 3 Vt. 431 (1830).

[9] McDowell *v.* Joice, 149 Ill. 124, 36 N. E. 1012 (1893); Labouchere *v.* Earl of Wharncliffe, L. R. 13 Ch. D. 346 (1879).

[10] Huth *v.* Humbolt Stamm No. 153, 61 Conn. 227, 23 Atl. 1084 (1891).

[11] Westcott *v.* Fargo, 61 N. Y. 542 (1875); McCabe *v.* Goodfellow, 39 N. Y. St. 941, 15 N. Y. Supp. 377 (1891).

[12] Code of Civil Procedure, § 1919.

[13] 71 N. J. L. 270, 57 Atl. 899 (1904).

[14] P. L. 1903, p. 545, § 40.

[15] Detroit Light Guard Band *v.* First Michigan Independent Infantry, 134 Mich. 598, 96 N. W. 934 (1903).

[16] McConnell *v.* Apollo Savings Bank, 146 Pa. 79, 23 Atl. 347 (1892); Methodist Episcopal Church *v.* Clifton, 34 Tex. Civ. App. 248, 78 S. W. 732 (1904).

[17] Gale *v.* Townsend, 45 Minn. 357, 47 N. W. 1064 (1891); Welsh *v.* Kirkpatrick, 30 Cal. 202 (1866); Allen *v.* Clark & Thompson, 65 Barb. 563 (1873).

[18] Davison *v.* Holden, 55 Conn. 103, 10 Atl. 515 (1887); Schuylerville Nat'l Bank *v.* Van Derwerker, 74 N. Y. 234 (1878); Mertz *v.* Fenouillet, 13 App. Div. 222, 43 N. Y. Supp. 217 (1897).

[19] See Allen *v.* Clark, *supra*, p. 571.

stockholders for the debts of a certain class of corporations this would not make the corporations any less entities. And there seems no good reason why an unincorporated association should not be regarded as just this sort of an entity. If the association is regarded as an entity, certain difficulties are avoided, which are presented if the obligation is treated as an ordinary joint obligation. Under the latter view, for instance, if one of the members of the association were a nonresident of the state in which judgment was given, and if he had not been served with process within the state, the entry of judgment against the association would be void, in accordance with the interpretation of the Fourteenth Amendment, laid down in *Pennoyer* v. *Neff*.[20] Execution could not even be levied upon joint property under such a void judgment. Of course, the plaintiff might reach the property by an action *quasi in rem*, but there are advantages connected with a personal judgment for which a judgment *in rem* would hardly be an adequate substitute. As a practical matter, a voluntary association does act as a unit, and it would appear that the liability ought to be primarily that of the unit. To the man in the street who deals with a labor union or a club, there is no difference apparent between the conduct of that organization, unincorporated, and the conduct of a similar incorporated association. Nor is any difference apparent to a member. Affairs are managed in quite the same fashion: business is transacted in the association name: the entity in the world of things is quite as definite. It seems, too, that the view of these associations which confirms the popular notion of them is at least as much in harmony with the language of these statutes as the procedural view. Perhaps it would be possible to recognize such voluntary societies as entities, even where there is no statute. In *Simpson* v. *Grand International Brotherhood of Locomotive Engineers*, an interesting recent case, the West Virginia court has refused to go this far.[21] At any rate, the statutes afford a desirable opportunity to make the law accord with ordinary thought, and, at the same time, to lessen the divergence between the treatment of organizations substantially similar.

ADOPTION OF ADMIRALTY RULES BY COMMON-LAW COURTS. — The United States Supreme Court has recently held that in personal actions for damages due to the negligence of shipowners, the state common-law courts must adopt the admiralty rule,[1] which denies compensation for consequential damages.[2] The question is whether this is in accordance with the intent of the Constitution and the former apparent attitude of the court, which has said that the "legislation of a State, not directed against commerce or any of its regulations, but relating to rights, duties, and liabilities of citizens, and only indirectly and remotely affecting

[20] 95 U. S. 714, 733 (1878). See also Blessing *v.* McLinden, 81 N. J. L. 379, 79 Atl. 347 (1911).

[21] 98 S. E. 580 (W. Va. 1919). See RECENT CASES, *infra*, p. 325.

[1] Chelentis *v.* Luckenbach S. S. Co., 247 U. S. 372 (1918).

[2] Laws of Oleron, Arts. VI–VII; Laws of Hanseatic Towns, Arts. XXXIX–XL; Laws of Wisby, Arts. XVIII–XVIV; Marine Ordinances of Louis XIV, Bk. III, Title IV, Art. XI. See also The City of Alexandria, 17 Fed. 390 (1883).